IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1201

ZEIGLER COAL COMPANY,

Petitioner,

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Zeigler Coal Company respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Seventh Circuit entered in this case on December 1, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit appears at 566 F.2d 582 and is appended at Appendix A. The order of the United States District Court for the Eastern District of Illinois dated September 1, 1976 is not reported, but is appended as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals was entered on December 1, 1977 and this petition is being filed within ninety days of that date. This Court's jurisdiction is invoked under 20 USC section 1254(1).

QUESTION PRESENTED

Whether a Wildcat Strike by United Mine Workers at Petitioner's Mines—Precipitated Over an Arbitrable Dispute Involving Members of the Same Union At Another Mine in the Same Industry-Wide Bargaining Unit—Violates the National Agreement Under which the Union Agreed to Submit All Disputes to Binding Arbitration, and is thus Subject to a Boys Markets Injunction?

STATUTE INVOLVED

This case involves section 301(a) of the Labor Management Relations Act, 29 USC 185(a) appended as Appendix E.

STATEMENT OF THE CASE

Petitioner Zeigler Coal Company is engaged in mining of bituminous coal at several locations in Illinois. The miners employed at Zeigler's mines are represented by the United Mine Workers of America, and during all pertinent periods were covered by the 1974 National Bituminous Coal Wage Agreement entered into between the Union and the

Bituminous Coal Operators' Association (BCOA), a multi-employer bargaining group of which Zeigler Coal Company was a member.

The 1974 National Bituminous Coal Wage Agreement, referred to hereinafter as the National Agreement, establishes a mandatory arbitration procedure for settlement of disputes arising at any mine, including differences respecting "... the meaning and application of the provisions of this Agreement ... matters not specifically mentioned in this Agreement, or ... any local trouble of any kind [arising] at the mines ..." (Article XXIII, App. D. p. 1d), and a separate promise to maintain the integrity of the agreement by exclusive resort to arbitration for settlement of all disputes and claims. (Article XXVII, App. D. p. 8d).

During 1975, while the National Agreement was in force and effect, a series of wildcat strikes took place at petitioner's Murdock Mine and Zeigler No. 5 Mine, and upon motion of petitioner the United States District Court for the Eastern District of Illinois issued a *Boys Markets* injunction[1] on August 25, 1975 restraining respondents Local 1870 and Local 8682, and all persons acting in concert with them for engaging in any strike or work stoppage, "... because of any dispute, disagreement or local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedure of the 1974 National Bituminous Coal Wage Agreement." (App. C. pp. 5c, 6c). This injunction remained in effect up to the time of the events described below.

In July 1976 United Mine Workers members employed by Cedar Coal Company at Boone, West Virginia engaged

[1] *Boys Markets* v. *Retail Clerks Union*, 398 US 235, 90 S.Ct. 1583, 26 L.Ed. 2d 199 (1970).

in an illegal strike over a job classification dispute which was subject to arbitration under the National Agreement, and this illegal strike precipitated a series of wildcat strikes by UMWA members at other mines in West Virginia, which spread rapidly to other states.

On July 30, 1976 two unidentified men appeared as pickets at the parking lots of petitioners' Murdock Mine and No. 5 Mine, and the miners employed at the mines declined to cross the picket line to report for work. Although the work stoppage was not authorized by the United Mine Workers' Union or any of its affiliated local unions, it continued until August 16, 1976. In all, thirty-nine production shifts were shut down as a result of this wildcat strike, and resulting losses to Zeigler measured by fixed overhead and other continuing costs amounted to $429,870.[2] In addition, the miner's pension and welfare funds were deprived of substantial contributions which would have accrued under the contractual formula which ties employer contributions to tons of coal produced and the number of employee hours worked.

On August 30, 1976 Zeigler filed with the District Court a motion requesting that civil contempt sanctions be imposed upon the locals for violation of the Court's August 25, 1975 injunction, which had never been dissolved and remained in force and effect at the time of the July 30, 1976 walkout. Upon consideration of Zeigler's motion the District Court noted that in the interim this Court had issued its decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S. Ct. 314, 49 L. Ed. 2d 1022 (1976), and concluded that the strike action of the respondent locals here did not violate the injunction

[2]Hearing Transcript, pp. 4, 5.

because, in the words of *Buffalo Forge*, it was not "... over any dispute between the union and the employer that was even remotely subject to the arbitration provisions of the contract." (App. B. p. 2b)

The Court of Appeals for the Seventh Circuit affirmed the District Court's ruling based upon a similar reading of *Buffalo Forge*. In so doing, the Court overruled its own previous decision in *Inland Steel Co.* v. *United Mine Workers*, 505 F.2d 293 (7th Cir. 1974) which held that the scope of the arbitration clause of the National Bituminous Coal Wage Agreement is sufficiently broad to embrace a work stoppage resulting from "local trouble of any kind arising at the mine", and thus warrants the use of a *Boys Markets* injunction against wildcat strikes brought on by the appearance of roving pickets.

The Court of Appeals declined to accept petitioner's argument that, unlike the strike at issue in *Buffalo Forge*, the strike here was not a "sympathy" strike but was in fact an extension of the illegal primary strike which began at the Cedar Coal Company mine in West Virginia, and that the strikers here had an identifiable interest in the outcome of the underlying contractual issue in the West Virginia dispute. Another important difference which the Court of Appeals refused to consider was that the primary strike in *Buffalo Forge* was a legal strike authorized and directed by the international union, whereas in this case the primary strike was an illegal, unauthorized strike admittedly involving an issue required to be submitted to arbitration under the National Agreement, and was thus in violation of the National Agreement.

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW IS CONTRARY TO FEDERAL LABOR POLICY FAVORING ARBITRATION OF INDUSTRIAL DISPUTES, AND IS BASED UPON A MISCONSTRUCTION OF THE DECISION OF THIS COURT IN BUFFALO FORGE.

This Court has repeatedly noted that the "unmistakable policy of Congress" as expressed in 29 USC sec. 173(d) is that "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." *Gateway Coal Co.* v. *United Mine Workers*, 414 US 368, 377 (1974). This policy was implemented by the Court's holding in *Boys Markets* that the Norris-La Guardia Act's ban on federal court injunctions in labor disputes should not be construed as precluding the exercise of a district court's power to enjoin a strike over a grievance which is subject to adjustment and arbitration under the collective bargaining agreement. 398 US 235, 254 (1970).

Buffalo Forge did not undermine or modify this policy, but merely held that *on the facts of that case* a duly authorized and legal sympathy strike by one local union in support of the economic strike of a sister local did not involve any arbitrable issue, and was therefore not subject to a district court injunction. Unfortunately, the district courts, and now some of the circuit courts, have erroneously construed *Buffalo Forge* as having the effect of overruling *Boys Markets* as applied to illegal wildcat strikes in the coal industry.

In the instant case both the District Court and the Court of Appeals failed to take into account the marked and numerous distinctions between the factual situation in *Buffalo Forge* and that present here. In treating the wildcat strike at Zeigler's mines as a "sympathy" strike comparable to the *Buffalo Forge* strike, they misconstrued the true nature of this strike in the overall context of the collective bargaining structure of the bituminous coal industry.

To illustrate the very fundamental differences between this case and *Buffalo Forge* it will be remembered that in that case there were two separate groups of employees in two separate bargaining units with no unitary labor agreement. One group, the production and maintenance employees, had an on-going collective bargaining contract, and the other group (office and technical) had just organized and was in the process of negotiating a contract. When the negotiations broke down the primary strike by the office and technical employees was not in derogation of any duty to arbitrate. It was simply an economic strike, and the dispute over the negotiation of an agreement was not arbitrable. Thus, when the production and maintenance employees struck in sympathy with the office and technical group there was no underlying arbitrable issue, and the production and maintenance strikers had no direct stake in the economic demands of the primary strikers. Their strike was, moreover, authorized and approved by the international union.

The contrast with the instant case is readily apparent. Here there was a single bargaining unit, and a single collective bargaining agreement covering all miners at the respective mines. The primary strike at Cedar Coal involved a dispute subject to arbitration under the National Agreement, and was an unauthorized, illegal strike in

derogation of the Agreement. The strike by the UMWA members at Zeigler's mines was for all practical purposes an extension of the primary strike to put pressure upon the multi-employer bargaining-unit employers, individually and collectively, to concede on an arbitrable issue which would have across-the-board application to all BCOA members and all UMWA members because of the unitary arbitration system created by the National Agreement. The Zeigler miners thus had a direct stake in any concessions or benefits which might be achieved as a result of their actions, and their objectives must be deemed integrated with those of the primary strikers.

In *Buffalo Forge* this Court found that the strike of the production and maintenance local "had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain", and "neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contracts between the employer and respondents." 428 US at 407, 408.

The situation here is entirely different, since the primary strike did indeed have the effect of denying and evading an obligation to arbitrate grievances, and of depriving the employer of his bargain. That strike admittedly involved an underlying arbitrable issue, and was in derogation of both the bargaining contract and the national policy favoring arbitration as a means of settlement of disputes over the application or interpretation of an existing collective bargaining agreement. *Gateway*, supra. The subsequent strikes at the Zeigler mines and other mines had one overriding purpose, namely, to bring about a concession by the signatory companies to the National Agreement on a disputed job classification question which was concededly

subject to arbitration. The Arbitration Review Board established under Article XXIII of the National Agreement, composed of union and employer representatives and a neutral third party jointly selected by them, has construed the contract language as barring such strikes. In Decision No. 108, issued October 10, 1977 the Arbitration Review Board stated:

> "... we do not believe that a distinction can properly be drawn between the picketing of an employee's own mine and the picketing of other mines, be they mines of the employee's Employer or mines of another Employer. [footnote omitted] ... the problem with drawing a distinction between an employee's own mine and other mines is that it would permit Miners, covered by one and the same Agreement, to enter into 'you picket my mine and I'll picket your mine' mutual-aid pacts, as we said in Decision 105."

Accordingly, it should be clear that there is no rational basis for applying the concepts of *Buffalo Forge* to this case. Not even superficially can it be said that this was a "sympathy" strike within the meaning of *Buffalo Forge*. This is not a case where one union with a separate agreement in a separate employee bargaining unit respects the picket line of another union negotiating for a separate agreement in a separate unit, and where there is no arbitrable dispute other than the sympathy strike itself. Here there was a direct unity of interest in an underlying dispute involving the meaning and application of the terms of the collective bargaining contract covering all of the parties involved.

By failing to recognize the true nature and purpose of the strike here, and in treating it as a parallel situation to

Buffalo Forge, the courts below seriously erred in refusing petitioner the relief requested.

II

THERE IS A COMPELLING NEED FOR A CLEAR-CUT RULING ON WHETHER THE DISTRICT COURTS CAN EXERCISE AUTHORITY TO ENJOIN ILLEGAL WILDCAT STRIKES BY COAL MINERS WHERE, AS HERE, THE PRIMARY STRIKE INVOLVES AN UNDERLYING ARBITRABLE ISSUE THE RESOLUTION OF WHICH WOULD HAVE ACROSS-THE-BOARD APPLICABILITY TO UMWA MEMBERS AT ALL MINES

The issue presented here is one of national interest, and expeditious resolution of it is essential to the stability of a major industry, and, in turn, of critical importance to the national economy. Wildcat strikes have become epidemic in the bituminous coal industry despite the fact that the National Agreement provides one of the broadest and most available arbitration procedures to be found anywhere. The Arbitration Review Board created under the National Agreement is expressly designed to reconcile differences among individual arbitrators, and assure uniformity as to the meaning and interpretation of the National Agreement.

Prior to the *Buffalo Forge* decision the federal courts construed the earlier decisions of this Court in *Boys Markets* and *Gateway Coal Co.* as authorizing injunctions against wildcat strikes in the coal fields. In *Gateway* the Court expressly found that the grievance and arbitration

language of the National Agreement[3] constituted an implied no-strike clause, and that the employer was entitled to injunctive relief against wildcat safety strikes. Relying on *Teamsters Local 174* v. *Lucas Flour Co.*, 369 US 95, 82 S.Ct. 571, 7 L.Ed. 2d (1962) the Court noted in *Gateway* that "A contractual commitment to submit disagreements to final and binding arbitration gives rise to an obligation not to strike over such disputes." 414 US at 381.

On the strength of *Gateway*, and until *Buffalo Forge* came down two years later, the courts of appeals proceeded to uphold the issuance of injunctions to restrain wildcat strikes resulting from stranger picketing at mines other than the mine where the primary dispute arose. See, e.g. *Inland Steel Co.* v. *United Mine Workers*, 505 F.2d 293 (7th Cir. 1974).

It is significant that in the immediate aftermath of *Buffalo Forge* a drastic surge in wildcat strikes by UMWA locals occurred, and there developed a state of virtual anarchy in which the national UMWA was rendered powerless to stem the ever-mounting tide of wildcat strikes by its affiliated local unions.[4]

The tragic consequences of this chaotic condition fall most heavily upon the miners who, for the most part, would

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[3]In *Gateway* the Court was dealing with the 1968 National Agreement which contained substantially similar arbitration provisions.

[4]For example, in the six month period prior to the Buffalo Forge decision in July 1976 wildcat strikes in BCOA mines resulted in a loss of slightly more than 500,000 man-days of work. By contrast, in August 1976 alone wildcat strikes caused a loss of 843,683 man-days of work, more than 9 million tons of coal production, $47,507,500 in miners' wages, and $16,705,000 in trust fund contributions. In August 1977 wildcat strikes in BCOA mines cost almost 1 million man-days, $59 million in miners' wages, 8.5 million tons of coal and $18 million loss to the trust funds. Source: BCOA Research Department Release Nov. 1977.

obviously prefer to continue earning a livelihood for themselves and their families, but are prevented from doing so by any small group of wilful hot heads who set up a wildcat picket line. Not only do the miners suffer the loss of a large part of their income each year, but their health and pension plans which are funded by tonnage contributions have been brought to the brink of insolvency.

As can be seen, wildcat picketing has the effect of denying to both sides, union and management alike, the expected fruits of their bargain, a bargain which was designed to ensure stable and uninterrupted employment for the miners on the one hand, and uninterrupted production for the mine operator on the other. The damage to the public interest, and to the national labor policy, is also manifest.

Unfortunately, in the wake of *Buffalo Forge* the Courts of Appeals have taken widely divergent positions in dealing with wildcat strikes in the coal industry, and as a result the current state of the law is one of confusion and uncertainty. The Court of Appeals for the Sixth Circuit, as well as the Seventh Circuit in the present case, has viewed stranger picketing as not in violation of the arbitration clause of the National Agreement, and hence not enjoinable. *Southern Ohio Coal Co.* v. *UMWA*, 551 F.2d 695 (1977), cert. den. 434 US ____ (1977). The Court of Appeals for the Fourth Circuit has held, on the other hand, that where the purpose of a wildcat strike by one local union of the UMWA was to compel the employer to concede an arbitrable issue to another local representing employees of the same employer the district court erred in dismissing the employer's complaint for injunction. *Cedar Coal Co.* v. *UMWA*, 560 F.2d 1154 (1977), cert. den. 434 US ____ (1978). Going a step further, the Court of Appeals for the Third Circuit in *Republic Steel Corp.* v. *UMWA*, Nos. 77-1350, 77-2037,

77-2038, decided February 2, 1978, involving a factual situation substantially similar to the present case, concluded that *Buffalo Forge* does not restrict the availability of injunctive relief against a wildcat strike brought on by stranger picketing ". . . if it be shown that the issues of the underlying strike were not only found to be arbitrable, but were found by an arbitrator to violate the union's no-strike obligation." Slip Op. at 17. In remanding the case for further consideration the Court stated:

> "Without attempting to plot the extreme boundaries of proof, we think that Republic should at least be required to prove that the stranger picketing was conduct that would be enjoinable under the *Boys Markets* rule. That is, Republic should be required to prove that the dispute stranger UMWA pickets had with *their* employer was one that was subject to the grievance and arbitration clause contained in the Agreement." Slip Op. at 19. Underscoring in original.

The Court held further that the International UMWA may be liable in damages if it is found not to have exercised reasonable efforts to halt the unlawful conduct of its members and stop the spread of illegal wildcat strikes. On this point the Court observed:

> "Our holding that the International may be liable is mandated by the public interest. The International union simply must bear certain obligations if it is to continue to be entitled to the rights and benefits accorded by our national labor policy. To the extent that any union — local, district, or international; craft, industrial or independent — refuses to enforce appropriately authorized union discipline upon recalcitrant members who violate either collective bargaining agreements or internal by-laws of the union, that union can be said to have abrogated a proportion of valued rights granted to the union under our national labor policy." Slip Op. at 23.

To the extent there exists such diversity among the various Circuit Courts as to the meaning of *Buffalo Forge* it is evident that further clarification of this important subject by this Court is urgently required.

CONCLUSION

In view of the overall public policy considerations articulated in *Boys Markets*, it must be concluded that the decision in *Buffalo Forge* was intended to have application only to the type of true "sympathy strike" involved in that case, and that the Court in *Buffalo Forge* could not have intended to deny relief for the kind of illegal, unauthorized stranger picketing and wildcat striking involved in this case.

It follows then, that the Court of Appeals here has grievously misconstrued and misapplied the *Buffalo Forge* decision, and that there is a compelling need for clarification of the issue by this Court. For this reason petitioner respectfully urges the Court to grant this petition for a writ of certiorari.

Respectfully submitted,

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Appendix A

In the
United States Court of Appeals
For the Seventh Circuit

No. 76-2113
Zeigler Coal Company,

Plaintiff-Appellant,

v.

Local Union No. 1870, United Mine Workers of America and Local Union No. 8682, United Mine Workers of America,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern Distict of Illinois
No. 75-2-085—Henry S. Wise, Judge.

Argued June 7, 1977—Decided December 1, 1977

Before BAUER, WOOD, *Circuit Judges*, and MARSHALL, *District Judge.**

BAUER, *Circuit Judge.* Ziegler Coal Company here appeals the district court's refusal to hold the United Mine Workers (UMW) locals in civil contempt for allegedly violating a prior order of the district court enjoining the locals from engaging in any work stoppages over disputes made subject to arbitration by

*The Hon. Prentice H. Marshall, United States District Court for the Northern District of Illinois, is sitting by designation.

the 1974 National Bituminous Coal Wage Agreement, to which both Zeigler and the UMW are signatories. Zeigler, alleging that the defendants were engaged in a wildcat strike over an arbitrable issue in violation of the injunction, sought both a civil contempt citation and damages. The defendants answered that they were engaged in a sympathy strike that was not over any underlying dispute with the company subject to arbitration and thus did not violate the district court's order. The district court agreed with the union's position and denied plaintiff's motion on the authority of *Buffalo Forge Co.* v. *United Steelworkers of America*, 428 U.S. 397 (1976). For the reasons noted below, we affirm the district court's ruling.

I.

The events giving rise to this action sprang from a local dispute at a Boone County, West Virginia mine, which prompted a wildcat strike by the mine workers there. The strike soon precipitated walkouts in seven States as other locals honored roving pickets set up by the West Virginia miners and others who had walked out in sympathy with them. The West Virginia strike had been in progress about three weeks when members of the locals involved here were confronted at the Zeigler mines by a picket line manned by persons claiming to be members of an unnamed Southern Illinois UMW local that had gone out in sympathy with the West Virginia miners. The locals honored the stranger pickets, and this action resulted.

Zeigler contends that, by honoring the stranger pickets, the locals violated the district court's order enjoining them from striking over arbitrable issues that had been issued under the authority of *Boys Markets, Inc. v. Retail Clerk's Union*, 398 U.S. 235 (1970). Relying on *Inland Steel Co. v. United Mine Workers of America*, 505 F.2d 293, 298-99 (7th Cir. 1974), Zeigler states that the locals' right to honor stranger pickets is an issue subject to arbitration under the governing collective

bargaining agreement, which provides for arbitration of "any local trouble of any kind arising at the mine." Accordingly, Zeigler reasons, by honoring the stranger pickets the locals were striking over an arbitrable issue and thus had violated the district court's *Boys Markets* injunction.

The locals answer that their miners were not striking over any local issue subject to arbitration but engaging only in a sympathy strike. According to the locals, the Supreme Court's recent decision in *Buffalo Forge Co. v. United Steelworkers Union*, 428 U.S. 397, 407-08 (1976), requires us to overrule our prior decision in *Inland Steel* to the extent that the latter holds that *Boys Markets* authorizes issuance of an injunction against a sympathy strike pending arbitration of any dispute over the legality of the strike.

II.

In *Inland Steel*, we held that a UMW strike resulting from the honoring of a stranger picket was enjoinable on the authority of *Boys Markets*. We reasoned that, because the National Bituminous Coal Wage Agreement of 1971 rendered the union's right to honor a stranger picket subject to arbitration, the union impliedly bound itself not to strike over that dispute. See *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 380-84 (1974). Accordingly, a *Boys Markets* injunction would issue to enforce the union's duty to arbitrate. See 505 F.2d at 299-300.

In a cogent dissent, Chief Judge Fairchild reasoned that, because the union's strike was precipitated merely by the picketing of a third-party union rather than by any local grievance against the employer, the strike could not be said to be "over" any underlying arbitrable dispute between the parties. Thus, even if the right to honor stranger pickets was itself arbitrable, injunctive relief would be inappropriate as it would effectively constitute a prejudgment of the merits of the dispute the parties had agreed to submit to arbitration. To hold

otherwise, said Judge Fairchild, "would be to permit the narrow exception created by *Boys Markets* to subsume the rule." 505 F.2d at 300.

In *Buffalo Forge*, the Supreme Court held that a sympathy strike allegedly violative of an express no-strike clause contained in the governing collective bargaining agreement was not subject to a *Boys Markets* injunction. Notwithstanding the conceded arbitrability of the question of whether the union's strike violated the no-strike agreement, the Court determined that the Norris-LaGuardia Act barred the preliminary injunctive relief sought by the employer. The *Boys Markets* rationale for issuance of an injunction was inapposite because

> "the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents. The strike had neither the purpose nor the effect of denying or evading any obligation to arbitrate or of depriving the employer of his bargain. Thus, had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case." 428 U.S. at 408 (emphasis in original).

Moreover, the Court noted, neither the fact that the strike allegedly violated the union's no-strike pledge, nor the fact that the parties' dispute over the legality of the strike was arbitrable, justified granting injunctive relief. The *Boys Markets* exception to the Norris-LaGuardia Act's anti-injunction policy, said the Court, had the limited purpose of enforcing agreements to arbitrate. That limited purpose would not be served by issuing an injunction for "the parties' agreement . . . to arbitrate their

differences themselves would be eviscerated if the courts for all practical purposes were to try and decide contractual disputes at the preliminary injunction stage." 428 U.S. at 411-12.

We think it clear from the above that *Buffalo Forge* proscribes issuance of a *Boys Markets* injunction against a sympathy strike alleged to be in violation of an express or implied no-strike agreement pending arbitration of the parties' dispute over the legality of the strike. *Buffalo Forge* teaches that where a strike is not "over" any underlying dispute between the parties subject to arbitration but rather is itself the very subject of the parties' dispute, issuance of an injunction against the strike would constitute an unwarranted judicial intrusion into the merits of the controversy.

In light of that teaching, we believe that our prior decision in *Inland Steel* must be reconsidered.[1] As the Supreme Court noted in *Buffalo Forge*, "[t]o the extent that the Court[s] of Appeals . . . have assumed that a mandatory arbitration clause implies a duty not to engage in sympathy strikes, they are wrong." *Id.* at 408 n. 10. In view thereof, we hereby overrule *Inland Steel* insofar as it holds that a *Boys Markets* injunction may issue against a sympathy strike pending arbitration of any dispute between the parties concerning the Union's right to engage in such a strike.** Accord, *United States Steel Corp. v. United Mine Workers of America*, 548 F.2d 67 (3d Cir. 1977), overruling *Island Creek Coal Co. v. United Mine Workers of America*, 507 F.2d 650 (3d Cir. 1974).

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[1]Even before the Supreme Court decided *Buffalo Forge*, we had limited *Inland Steel* in *Hyster Co. v. Independent Towing & Lifting Mach. Ass'n*, 519 F.2d 89 (7th Cir. 1975), and *Gary Hobart Water Corp. v. NLRB*, 511 F.2d 284 (7th Cir. 1975).

**Pursuant to the provisions of Circuit Rule 16(e), the portions of this opinion relating to the conflict between *Inland Steel* and *Buffalo Forge* have been circulated among all judes in regular active service. No judge favored a rehearing en banc with respect to the overruling of *Inland Steel.*

III.

Recognizing that we might find it necessary to overrule *Inland Steel* in light of *Buffalo Forge*, Zeigler seeks to distinguish the Supreme Court's decision from the case at hand. The company claims that, unlike the strike at issue in *Buffalo Forge*, the defendants' strike was not a true "sympathy" strike but merely an extension of the illegal primary strike begun by their brother West Virginia local. Zeigler notes that the *Buffalo Forge* strike was authorized by the international union, and that the striking workers had no direct or beneficial interest in the outcome of the dispute between the employer and the union whose picket lines precipitated their strike. Here, in contrast, says Zeigler, the defendants had a direct contractual interest in the outcome of the underlying West Virginia dispute because they were bound by the same collective bargaining agreement as the West Virginia local. Accordingly, Zeigler reasons, because the defendants stood to benefit from extending and supporting the illegal primary strike over an issue that all the UMW locals had agreed to submit to arbitration, their strike cannot be regarded as the type of disinterested "sympathy" strike protected by *Buffalo Forge*.

We would agree with Zeigler that, if the defendants' strike were simply an extension of the illegal West Virginia wildcat, this would be a paradigm case for a *Boys Markets* injunction. There is nothing in the record before us, however, supportive of the company's contention that, by refusing to cross the stranger pickets, the defendants were adopting the grievances and goals of the West Virginia local as their own and thus striking "over" a matter subject to arbitration. Like the Sixth Circuit in *Southern Ohio Coal Co. v. United Mine Workers of America*, 551 F.2d 695, 703-05 (6th Cir. 1977), we are unpersuaded that the mere fact that the defendants were bound by the same contract as their brother West Virginia miners means that they had any direct or beneficial interest in the outcome of the underlying dispute that precipitated the West Virginia strike. The district court found

that the defendants were engaged merely in a sympathy strike and not a strike over any local grievance with Zeigler that they were contractually bound to arbitrate. The court's finding is amply supported by the record before us, and, for the reasons noted in *Southern Ohio Coal Co., supra*, neither the fact that the defendants were bound by the same contract as the West Virginia local nor the fact that the stranger picket may itself have been illegal give us cause for distinguishing *Buffalo Forge*.

We believe the district court correctly ruled that the defendants were not engaged in a strike "over" any dispute with Zeigler subject to binding arbitration. Accordingly, they were not in violation of the district court's prior order. The district court's judgment is therefore

AFFIRMED.

A true Copy:
Teste:

_____
Clerk of the United States Court of Appeals for the Seventh Circuit

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS

ZEIGLER COAL COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA,	)	No. 75-2-085
	)	
AND	)	
	)	
LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA,	)	
	)	
Defendants.	)	

ORDER

This matter comes before the Court on the motion of ZEIGLER COAL COMPANY to punish defendant mine worker locals Nos. 1870 and 8682 for contempt in having allegedly violated the terms of a preliminary injunction issued by this court on August 25, 1975. The events giving rise to the present action involve an unauthorized work stoppage by defendant locals, in response to the request of members of a third local not in the employ of plaintiff, to participate in a multistate wildcat, as a supposed demonstration of union solidarity; A sympathy strike. The parties do not contend that the work stoppage herein complained of, which began on July 30, 1976

and terminated on August 16, 1976, was the result of any dispute arising between the parties to this action. The sole question for determination by this court is whether such a work stoppage is proscribed by the preliminary injunction heretofore entered in this case.

Oral argument was heard on August 16, 1976, and briefs were submitted. The court, being fully advised in the premises, finds that the unauthorized walkout was not in violation of its August 25, 1975 order. The scope of the order, by its terms, was limited to "any dispute, disagreement or local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedure of the 1974 National Bituminous Coal Wage Agreement, . . ."

The court finds that the walkout was not "over any dispute between the union and the employer that was even remotely subject to the arbitration provisions of the contract." *Buffalo Forge Co. v. United Steel Workers of America, AFL-CIO, et al.*, 44 L.W. 5347, 5349 (July 6, 1976); See also *Hyster Company v. Independent Towing and Lifting Machine Association*, 519 F.2d 89 (7th Cir. 1975). There being no arbitrable dispute as the subject of the walkout, there can be no violation of this court's order, which was fashioned pursuant to *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970).

IT IS THEREFORE ORDERED that the motion of ZEIGLER COAL COMPANY to punish defendant union locals for contempt of this court's order of August 25, 1975, be, and the same is hereby, denied.

ENTERED this first day of September, 1976.

CHIEF JUDGE

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS

ZEIGLER COAL COMPANY, Plaintiff, vs. LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA, and LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA, Defendants.	Case No. 75-2-085

PRELIMINARY INJUNCTION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming on to be heard pursuant to the Order to Show Cause issued by this Court on August 15, 1975, returnable on August 20, 1975, and a Stipulation and Order entered August 18, 1975, continuing and setting over the same until August 25, 1975, and statements of counsel and testimony having been heard in open Court with all parties having full opportunity to present evidence, examine and cross-examine witnesses and to make arguments, and the Court being fully advised in the premises, the Court herewith makes the following Findings of Fact and Conclusions of Law and Order:

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Illinois and is engaged in commerce within the meaning of the Labor-Management Relations Act as amended, 29 USCA, Section 152 (2) and (7). It operates a coal mine near Newman, Illinois known as Zeigler No. 5 Mine and one near Murdock, Illinois, known as Murdock Mine.

2. Defendants, Local Union No. 1870 and Local Union No. 8682, United Mine Workers of America, are unincorporated labor organizations representing employees in an industry affecting commerce within the meaning of Section 2 (5) and Section 2 (7) of said Labor-Management Relations Act, 29 USCA 152 (5) and (7).

3. This action arises under Section 301 of the Labor-Management Relations Act as amended, 61 Stat. 156, 29 USC Section 185.

4. Plaintiff and Defendants, Local Unions 1870 and 8682, are parties to and operate under a labor contract entitled 1974 National Bituminous Coal Wage Agreement. By virtue of said contract, Local 1870 is the representative of employees at Zeigler No. 5 Mine, and Local 8682 is the representative of employees at Plaintiff's Murdock Mine.

5. All of the acts referred to herein transpired within the Eastern Judicial District of Illinois.

6. The contract referred to above provides that all disputes and local trouble between the parties thereto including those of the kind set forth below herein shall be subject to the grievance procedure detailed therein and shall if necessary be settled and resolved by final and binding arbitration which arbitration procedure is made mandatory upon the

parties to the exclusion of resorting to self help through strikes or work stoppages.

7. That in violation of their duty under the National Contract, the Defendants encouraged, commanded, cajoled, and otherwise persuaded members of the respective locals scheduled to work the 12:01 a.m. shift on August 13, 1975 at Plaintiff's Murdock Mine and those scheduled to work the 8:00 a.m. shift on August 13, 1975, at Plaintiff's No. 5 Mine, to refrain from working, as a result of which the shifts scheduled to work at those times failed to work, but instead struck and shutdown all work at Plaintiff's Zeigler No. 5 Mine and Murdock Mine, even though a full work schedule existed.

8. That the walkout and work stoppage concerned Defendants' dissatisfaction with the Plaintiff's policy of shift rotation at its No. 5 and Murdock Mines, which is a dispute required to be resolved under the grievance arbitration mechanism of the National Contract.

9. That at or about the hour of 10:00 a.m. on August 15, 1975, this Court issued a Temporary Restraining Order enjoining Defendants from continuing the work stoppages referred to in Paragraph 7; and, that the said Temporary Restraining Order was duly served upon Robert Brackney, President of Defendant Local 1870 and Walter Barnett, Jr., President of Defendant Local 8682, at or about 11:30 a.m. August 15, 1975; but, that in contravention thereof, Defendants failed to return to work but instead continued in said work stoppage and walkout.

10. That as a result of the work stoppage referred to in Paragraph 7, Plaintiff has lost 166,780 tons of scheduled production of coal (all of which was committed under

current supply contracts) based on three 8-hour shifts per day, 6 days a week of scheduled work or 61 shifts which were not worked to date; that scheduled production at the Zeigler No. 5 Mine was and is 2,666 tons per shift, and at the Murdock Mine, 2,800 tons per shift.

11. That Defendant Local 1870 previously was sued by Plaintiff for an injunction in connection with illegal wildcat strikes which began April 4, 1974, May 1, 1974, August 1, 1974, March 12, 1975, and July 16, 1975 at Plaintiff's Zeigler No. 5 Mine, and that on August 7, 1974, this Court issued a Preliminary Injunction prohibiting this Defendant from violating the grievance arbitration provisions of the prior contract between the parties and from engaging in any striking or work stoppage, interruption of work or picketing at Plaintiff's mines, and that on March 12, 1975, this Court issued a Temporary Restraining Order prohibiting the Defendant Local 1870, from engaging in any and all strikes, work stoppages, interruptions of work or picketing the Plaintiff's Zeigler No. 5 Mine involving *bathhouse facilities*, and that the said Order continues in full force and effect; that Defendant Local 8682 previously was sued by Plaintiff for an injunction in connection with illegal wildcat strikes which began May 1, 1974 and May 29, 1974, under the old contract at Plaintiff's Murdock Mine, and that on May 7, 1974, this Court issued a Preliminary Injunction prohibiting this Defendant from violating the grievance arbitration provisions of the prior contract between the parties and from engaging in any striking or work stoppage, interruption of work or picketing at Plaintiff's mines over disputes involving work assignment.

12. The walkouts referred to above in the preceding paragraph occurred in violation of the provision for settlement of disputes of the collective bargaining agreement aforesaid.

13. Plaintiff has at all times been willing to submit the disputes involved in the instant walkout to final and binding arbitration.

14. Plaintiff has made a showing that a permanent injunction is appropriate in this proceeding despite the anti-injunction provision of the Norris LaGuardia Act. 29 USC, Section 104; *Boys Markets, Inc. v. Retail Clerks Union Local No. 770*, 398 US 235 (1970); *Old Ben Corporation v. Local 1487, United Mine Workers*, 457 F2d 162 (1972); *Old Ben Corporation v. Local 1487, United Mine Workers, et al.*, 500 F2d 950 (1974).

15. A substantial loss of coal production per day has been suffered during the instant walkout with result in financial losses to the Plaintiff, the miners at Plaintiff's Zeigler No. 5 and Murdock Mines have received no wages during the walkout.

16. It appears to the Court that the Plaintiff will suffer immediate and irreparable injury, harm and damage if a preliminary injunction is not issued, that Plaintiff has no adequate remedy at law and that Plaintiff will suffer more from denial of an Injunction than Defendants will suffer if the relief is granted.

ACCORDINGLY,

IT IS, THEREFORE, ORDERED that, pending further Order of this Court, Local Union No. 1870 and Local Union No. 8682, United Mine Workers of America and all persons acting in concert and participation with them be and they are hereby enjoined and restrained from engaging in any strike or work stoppage, interruption of work or picketing of Plaintiff's Zeigler No. 5 or Murdock Mine, or at any other of Plaintiff's mines wherever located because of any dispute, disagreement or

local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedure of the 1974 National Bituminous Coal Wage Agreement, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Injunction shall remain in effect indefinitely pending further Order of this Court.

ENTERED THIS 25 DAY OF AUGUST, A.D. 1975.

/s/ HENRY S. WISE

CHIEF JUDGE

Appendix D

Article XXIII—SETTLEMENT OF DISPUTES

Section (a) **Mine Committee**

A committee consisting of at least three Employees shall be elected at each mine by the Employees at such mine. Each member of the Mine Committee shall be an Employee of the mine at which he is a committee member, and shall be eligible to serve as a committee member only so long as he continues to be an Employee of said mine. The duties of the Mine Committee shall be confined to the adjustment of disputes arising out of this Agreement that the mine management and the Employee or Employees fail to adjust. The Mine Committee shall have no other authority or exercise any other control nor in any way interfere with the operation of the mine; for violation of this section any and all members of the committee may be removed from the committee.

A Mine Committee member shall not be suspended or discharged for his official actions as a Mine Committee member. An Employer seeking to remove a Mine Committee member shall so notify the affected Mine Committee member and the other members of the Mine Committee. If the Mine Committee objects to such removal, the matter shall be submitted directly to arbitration within 15 calendar days from such objection. If the other members of the Mine Committee so determine, the affected member shall remain on the Mine Committee until the case is submitted to and decided by an arbitrator. If the Employer requests removal of the entire Mine Committee, the matter automatically shall be submitted to arbitration within 15 calendar days after such request, and the Mine Committee will continue to serve until the case is submitted to and decided by an arbitrator.

Section (b) **Arbitration Review Board**

1. Within 60 days following the effective date of this Agreement, the United Mine Workers of America and the Bituminous Coal Operators' Association will establish an Arbitration Review Board composed of one representative of the UMWA, one representative of the Employer, and a chief umpire to be jointly selected by both parties. This 60-day period may be extended by mutual agreement.

2. The chief umpire jointly selected by the parties shall serve for the balance of this Agreement, unless removed by formal resolution adopted by either the International Executive Board of the United Mine Workers of America or the Board of Directors of the Bituminous Coal Operators' Association.

3. In the event of removal, resignation, death or incapacity of the chief umpire, the president of the UMWA and the president of the B.C.O.A. shall endeavor to select a mutually acceptable successor within 15 days. In the event the parties fail to agree, they shall request the aid of the Federal Mediation and Conciliation Service in selecting a mutually acceptable successor. The composition of the panel may be considered by the parties at the time when renewal agreements are being negotiated.

4. The presidents of the UMWA International Union and the B.C.O.A. shall jointly establish a panel of impartial arbitrators for each UMWA district. These panels may be changed, augmented or supplemented by mutual consent of the appointing parties. Arbitrators may be removed from a panel by either party upon 10 days advance written notice.

Section (c) **Grievance Procedure**

Should differences arise between the Mine Workers and the Employer as to meaning and application of the provisions of this Agreement, or should differences arise about matters not

specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

Disputes arising under this Agreement shall be resolved as follows:

1. The Employee will make his complaint to his immediate foreman who shall have the authority to settle the matter. The foreman will notify the Employee of his decision within 24 hours following the day when the complaint is made.

2. If no agreement is reached between the Employee and his foreman, the complaint shall be taken up within 7 working days of the foreman's decision by the mine committee and mine management. Where the committee consists of more than three members, the Employer shall have the right to meet with a maximum of three (to be chosen by the mine committee). The committee and management will complete the standard grievance form stating the Employee's grievance and the response of management.

3. If no agreement is reached by the committee and management within 7 working days after the complaint is taken up by them, the grievance shall be referred to a representative of the UMWA district, designated by the Union, and a representative of the Employer. Within 7 working days of the time the grievance is referred to them, the representative of the Union and the Employer shall review the facts and pertinent contract provisions in an effort to reach agreement. Unless both parties consent, no verbatim transcript of testimony shall be taken. Following the meeting, should they fail to settle the grievance, the representatives shall prepare a concise, joint statement. In the joint statement the Union and Employer will each set forth its views of the facts and its position on the contractual issues. The joint statement shall be signed by the representative of the UMWA district and the representative of the Employer. Neither the Union's representative nor the Employer's shall be persons who participated in steps one or two of this procedure.

4. In cases where the district representative and the representative of the Employer fail to reach agreement, the matter shall, within 10 calendar days after referral to them, be referred to the appropriate panel arbitrator who shall decide the case without delay. Cases shall be assigned to panel arbitrators in rotation. Unless testimony has been taken at step 3, at the earliest possible time, but no later than 15 days after referral to him, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence and consider arguments. In cases where a transcript has been made at step 3, the arbitrator shall have the discretion to conduct a supplementary hearing at or near the mine site. In cases in which the parties have made no transcript at step 3, and the joint statement indicates that there is no question of fact involved in the grievance, the arbitrator may decide the case without a transcript and upon the basis of the joint statement of the parties, exhibits and briefs. The arbitrator's decision shall be final except as provided in paragraph 5 herein, and shall govern only the dispute before him. Expenses and fees incident to the service of an arbitrator shall be paid equally by the Employer or Employers affected and by the UMWA district affected.

5. Either party to an arbitration, upon receiving a final award by a panel arbitrator, may petition the Arbitration Review Board to appeal the decision of the panel arbitrator. Such petition shall include a statement of the grounds for the appeal, which shall consist of one or more of the following:

(i) That the decision of the panel arbitrator is in conflict with one or more decisions on the same issue of contract interpretation by other panel arbitrators.

(ii) That the decision involves a question of contract interpretation which has not previously been decided by the Board, and which in the opinion of the Board involves the interpretation of a substantial contractual issue.

(iii) That the decision is arbitrary and capricious, or fraudulent, and therefore, must be set aside.

Upon receipt of such petition, the Arbitration Review Board shall review the decision of the panel arbitrator to determine whether grounds for appeal exist. If not, the Board will so inform the parties. If so, the Board shall review the decision of the panel arbitrator making whatever changes are necessary to assure that the final decision correctly resolves all contractual questions and issues presented, and is consistent with prior decisions of the Board. The Board's decision shall be made by majority vote, and it shall issue its decision within fifteen days. Following review, the Board shall countersign its decision and transmit a copy to each party.

Section (d) **Fifteen Day Limitation**

Any grievance whichis not filed by the aggrieved party within fifteen calendar days of the time when the Employee reasonably should have known of it, shall be denied as untimely and not processed further.

Section (e) **Earnest Effort to Resolve Disputes**

An earnest effort shall be made to settle differences at the earliest practicable time. Where an Employee makes a complaint during work time, the foreman shall, if requested to do so, and if possible, consistent with continuous production, discuss the matter briefly on the spot.

Section (f) **Employee's Right to Presence of Member of Mine Committee**

Except where it will interfere with production, an Employee shall be entitled, at his request, to have a member of the Mine

Committee present to assist him at any discussion with his foreman held pursuant to section (c)(2) of this Article.

Section (g) **Right of Grievant to be Present**

The grievant shall have the right to be present at each step of the grievance procedure until such time as all evidence is taken.

Section (h) **Finality of Decision or Settlement**

Settlements reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to furthr proceedings under this Article except by mutual agreement. Settlements reached at steps 2 and 3 shall be in writing and signed by appropriate representatives of the Union and the Employer.

Section (i) **Exclusion of Legal Counsel**

Neither party will be represented by an attorney licensed to practice law in any jurisdiction in any of the steps of the grievance procedure except by mutual agreement applicable only to a particular case.

Section (j) **Expenses of Chief Umpire**

The expenses of the chief umpire, and his necessary office and staff expenses will be shared equally by the BCOA and the UMWA.

Section (k) **Circulation of Approved Decisions**

Panel arbitrators shall be furnished promptly with copies of all decisions entered by the Board. The chief umpire through his staff shall prepare a looseleaf binder which shall contain summaries of the Board's decisions with respect to contractual issues arising under the Agreement. The binder shall be organized along the lines of the Agreement and shall be indexed by subject matter and case title. The binder shall be maintained by the chief umpire through his staff on a current basis and copies of any pages changed to reflect new decisions shall be provided to the parties on a monthly basis.

Section (l) **Waiver of Time Limits**

By agreement the parties may waive the time limits set forth in each step of the grievance procedure.

Section (m) **Settlement of Differences or Disputes During the First Sixty Days of this Agreement**

During the first sixty days of this Agreement, or thereafter by a mutually agreed extension, the parties hereto agree to resolve differences or disputes covered by this Article in accordance with the Settlement of Disputes provisions of Article XVII of the National Bituminous Coal Wage Agreement of 1971 which is adopted and incorporated herein by reference.

Article XXVII—MAINTAIN INTEGRITY OF CONTRACT AND RESORT TO COURTS

The United Mine Workers of America and the Employers agree and affirm that, except as provided herein, they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Disputes" Article of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract and by collective bargaining without recourse to the courts.

The Employer, however, expressly authorizes the Union to seek judicial relief, without exhausting the grievance machinery, in cases involving successorship.

Appendix E

STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.